

**Report to the Honorable Gregg D. Renkes
Attorney General of Alaska**

**Review of the Operations of the
Alaska Department of Law**

May 2003

Conference of Western Attorneys General
Tom Gede, Executive Director
1300 I Street • Sacramento, CA 95814
Tele: (916) 323-1939 • FAX: (916) 323-0241
E-mail: tom.gede@doj.ca.gov
Web site: www.CWAGweb.org

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Executive Summary

At the invitation of Attorney General Gregg Renkes, the Conference of Western Attorneys General assembled a team of experienced legal administrators to conduct a week-long review of the operations of the Alaska Department of Law. Among the goals of the review was to provide an analysis of the more subjective factors which go into the operation of an Attorney General's office, factors which are not especially subject to precise numerical measurement. Additionally, the Review Team was tasked with examining the operations of the office in light of the previous CWAG office review reports, evaluating whether previous recommendations had been implemented or carefully rejected.

The following is an executive summary of the Review Team's recommendations, but not its findings, as outlined in each chapter. Those findings are discussed in a generalized way throughout the report and serve as background for these recommendations.

The Review Team's first and most important recommendation is that the Department should develop a clean, clear, lean reporting structure. For the Civil Division, this should include the elimination of Office Chiefs and the multiple geographic-based supervising attorneys for the same subject matter units. The Department should consider reducing the number of sections, and Section Chiefs, to between six and nine. Such an organizational structure would allow for a Deputy Attorney General for the Civil Division with six to nine substantive Section Chiefs. This would create a optimal functional management team for the Division.

The elimination of Office Chiefs may leave some tasks (facilities issues, training, support staff, etc.) without a home. This can be resolved with the creation of a deputy to the Deputy Attorney General or by assigning someone handle these administrative responsibilities.

Each Section Chief, some of whom are now responsible for attorneys in several geographic areas, must actively supervise the work product of his or her attorneys. Case loads for supervisors need to be reduced and adequate training provided to accommodate this new expectation. In addition, the Deputy Attorney General must supervise the Section Chiefs' supervision.

The Attorney General should urge the Legislature to fund the creation of an immediate Executive Office of the Attorney General with the following functions: public relations, special issue advice, public finance, legislative and gubernatorial initiatives, opinions, appeals, regulations and ethics. The Attorney General should decide the scope of responsibilities of one or more supervisors of this unit and select a title.

The Attorney General should hire or designate one or more public affairs specialists.

It would be particularly valuable to have one who is familiar with criminal matters, to serve as an advisor, media contact and assistant, housed in the Anchorage DA's office, and another specialist in Juneau, to serve the Attorney General more immediately in key executive matters.

The Department should seek to increase the funding of the Department of Law and seek to remove barriers to more flexible funding of the office. Outside funding sources should be sought, particularly federal ones; a firm to assist in finding funds could be retained. The Department should seek to retain some portion of fines and penalties.

The Department should closely examine the use of RSA's including requiring other state agencies to pay their fair share for the work they receive and exploring cost allocation methods for calculating the dollar value of each attorney's work that more fairly represents the value provided.

In the area of the criminal law, the Department should explore procedures to overcome the disadvantages of the "trailing calendar" system and consider use of the pre-indictment hearing process. The Department should also make it a priority to resist the unfunded mandate arising from misdemeanor cases being shifted from various city attorney offices to the district attorneys, or, in the alternative, convince the Legislature to fund the Department of Law accordingly.

The Department should re-examine, improve and communicate its office policies and guidance to district attorneys on standards for filings, immunity and pleas. A strong public presence of its criminal division leadership should be established in Anchorage, where the majority of criminal cases are heard and where more media outlets are located. Training for the appointed district attorneys in personnel, supervision, dealing with the press, leadership and management should be emphasized. Line prosecutors need additional training in court rules, pre-trial and trial procedures and trial tactics and strategy; experts should be invited to conduct periodic DA training more than the once-a-year conference. The Department should make a concerted effort to develop an active mentoring program using its senior attorneys to train and help develop the newer attorneys' skill sets and overall performance.

The current forced Bush assignment system should be dropped; instead, inducements should be considered to attract volunteers. Bush facilities and resources need considerable improvement and investment.

It is recommended that juvenile criminal prosecution be handled by the district attorney's offices, not as part of Child Protective Services. OSPA should handle misdemeanor appeals instead of the district attorney offices.

The Department should make it a priority to increase support staff pay and

promotional opportunities. An effective and realistic orientation and training program for new legal support staff is needed. The Department should conduct a survey to determine the proper use and allocation of law office assistants and other support staff. CWAG can locate expert assistance.

One person in the Department of Law should be made responsible for overseeing the use of outside counsel in the Civil Division. Procedures should be promulgated stating clearly when outside counsel may be retained and the process to be followed to approve both the use of outside counsel and the specific counsel selected.

Promulgated procedures should include requiring budgets, budget accountability, and careful work supervision of outside counsel. All contracted legal work should be subject to closer review, renewal requirements and shorter or smaller increments that require approval. Both clients and Department of Law lawyers should be trained in these techniques.

The Department should adopt a goal of reducing use of outside counsel. The Department should prepare a thorough assessment of the use and cost of outside counsel, with the goal of justifying additional attorney and paralegal positions in lieu of outside counsel.

The Department should institute awards ceremonies, brown-bag lunches with the AG, retreats and more opportunities for the AG to interact and thank departmental staff. The Department should publish electronically a newsletter, apart from the Monthly Report, for communicating departmental news and information. The regular state-wide supervisors' teleconference should be continued to facilitate information exchange and build cohesiveness.

The Department should initiate a pay comparability analysis, and seek more funds for higher pay, if the comparability analysis shows it is necessary. The Department should re-evaluate geographic pay differentials.

The Department should seek more flexible work and leave rules. The Department should seek authority to provide cash awards and bonuses for extraordinary performances. The Department should revise its performance evaluation forms and methods to overcome "grade creep" and instead find meaningful measures of performance.

The Department should institute an office-wide recruitment program, provide incentives or preferences to existing employees to move into open positions, "sell" the office both inside and outside of Alaska, and equitably resolve the failed Bush assignment policy.

A vigorous in-house training program, coordinated by a Training Council or staff

member, must be established. Experts from other AG offices should be consulted. Reliance on Continuing Legal Education (CLE) training opportunities from the National Association of Attorneys General (NAAG) and other professional organizations should be continued, but treated as supplemental to training coordinated in-house. Orientation for new attorneys and support staff needs to be standardized and better executed. Concerted “public service” attorney training is imperative. Cross-fertilization of attorney practice should be a training goal. The Department has a serious and immediate need for a coordinated program of information services (IS) training for all personnel state-wide.

The Department should schedule a targeted IS review team from other state AG IT/IS offices for analysis and options for improved IS and knowledge management in the Alaska DOL. IS should improve its Help Desk and user support. The Department's case management system should be completely re-evaluated; a web-interface-type system should be preferred. A state-wide brief bank or improved I-Drive procedure should be established. IS and tech support in the Bush should be vastly improved. The Department should establish one or more IS user committees.

The Department should empower the new Legislative Liaison in the Attorney General's Office. The Attorney General should maintain regular communications with the legislative leadership. The Attorney General should ask the legislature to respond to the funding inadequacy and lack of budget flexibility.

The Department should modify the settlement authorization policy to match any structural changes. The Department should require attorneys to be trained in the use of formal risk assessment techniques and to use those techniques as part of the settlement appraisal process. Expert advice should be obtained.

The Department should centralize and standardize its ethics advice function, with well-publicized points of contact, both civil and criminal. The Department should consider establishing an Ethics Committee with designated experts in ethics legal areas.

The Department should continue timekeeping requirement for Civil Division and require timekeeping for Criminal Division. The Department should seek a simpler timekeeping system. The Department should form a task force or seek outside assistance to develop the appropriate metrics to demonstrate attorney work effort.

Procedures for the review of regulations by the Department should be re-examined and be streamlined.

Introduction

Gregg D. Renkes was appointed Attorney General of Alaska by Governor Frank Murkowski and took office on December 9, 2002. He was confirmed in his position by the Alaska Legislature on March 4, 2003.

Attorney General Renkes invited the Conference of Western Attorneys General (CWAG) to conduct an independent review of the operations of the Alaska Department of Law to identify strengths and weaknesses of the office and to recommend any improvements which might be of value. Attorney General Renkes invited the team to interview departmental staff, client agencies, state and federal judges, legislators and others to provide the best possible assessment of the office.

A. Review Team Composition

Tom Gede, Executive Director of CWAG, organized a team of experienced attorneys with extensive experience in public service and public policy legal work to perform the review. In addition to Gede, the group included Washington State Attorney General's Criminal Division Chief Scott Blonien, Steptoe & Johnson (Washington, D.C.) attorney Tom Collier, and ConocoPhillips (Anchorage, AK) attorney Sean Parnell.

Tom Collier is a partner in the Washington, D.C., firm of Steptoe & Johnson LLP, where he practices in the dispute resolution, environmental and natural resources areas. He formerly served as the Chief of Staff and Chief Operating Officer of the Department of Interior until July 1, 1995, reporting directly to the Secretary of Interior. Previously, he served as Deputy Assistant Secretary of the Department of Housing and Urban Development. His prior private legal work included government procurement law and white collar criminal defense work. A 1972 graduate of the University of Virginia, he earned his J.D. in 1975 from the University of Mississippi, after which he clerked for Judge Charles Clark of the United States Court of Appeals for the Fifth Circuit.

J. Scott Blonien serves as the Division Chief of the Criminal Justice Division of the Washington Attorney General's Office, supervising trial, appellate and writ attorneys in criminal cases handled by the state, including death penalty cases. Mr. Blonien previously served as the chief of the Correctional Law Section in that office. He joined that office in 1987, having previously served as Chief Prosecuting Officer for Klickitat County, Washington for seven years. A graduate of Northern Arizona University, he earned his law degree from Gonzaga School of Law in 1980. He participated in a previous CWAG Review Team for the Alaska Attorney General in 1996.

Sean Parnell is admitted to practice in Alaska and Washington, D.C., and was in private practice for 13 years. He is a former member of the Alaska State Senate and Alaska House of Representatives, with service as the Co-Chair of the Senate Finance

Committee and he chaired Department of Law Budget Subcommittee. He now serves as Director for State Government Relations for ConocoPhillips Alaska, Inc. Most recently he served as Governor Murkowski's chair of the Department of Law Transition Team.

Tom Gede is Executive Director of the Conference of Western Attorneys General (CWAG), where he coordinates information on litigation, legislation and policy matters of unique interest to the West. He formerly served as a Special Assistant Attorney General, Supreme Court and Amicus Counsel on the executive staff of the California Attorney General's Office, also having served in the Criminal Division and the Government Law Section, handling First Amendment and election law. He is an adjunct professor for Federal Indian Law at McGeorge School of Law. A graduate of Stanford University and U.C.-Hastings College of the Law, he served as a U.S. Navy officer from 1970 to 1977. He has headed up or participated in CWAG Office Reviews in Utah, Oregon, Wyoming, Hawaii, and North Dakota, with special reviews of the Washington State Medicaid Fraud Control Unit and North Dakota's Multi-Jurisdictional Drug Task Forces.

B. Scope of Review Team Work

For its analysis, the Review Team relied upon the interviews of departmental staff, including support staff, line attorneys and supervising and managing attorneys, and people outside the office, including clients, legislators, and administrative, trial and appellate judges. The Review Team also relied upon a variety of materials provided by the Department before the review began, including organization charts, the Civil Manual, and various reports of caseloads, pay scales, budgets and payments, and office forms. Additionally, the team members relied upon their own collective experience in the public sector and legal community, and countless hours discussing their findings, comparing options and preparing this report.

For this review, approximately 100 interviews were conducted in Anchorage, Fairbanks and Juneau during the period of March 3 through March 7, 2003. Interviews were open-ended and sought to elicit general impressions of the Department as well as the existence of any problems. No restrictions were placed upon the Review Team at any time. Nothing was provided for attribution and this report does not identify any departmental staff by name. On the final day of the review, the team had the opportunity to discuss its views with the Attorney General.

The Review Team was not equipped to develop or provide any statistical performance results. The statistical and numerical measurements that were prepared for the 2003 Performance Review for Governor Murkowski provide certain objective criteria and results concerning the Department's output. The CWAG Review Team, on the other hand, attempted to provide some assessment of more subjective factors that play a significant role in the efficiency and efficacy of a public law office. Morale, communications, organization and personnel policies play a significant role in the performance of the

Department. By interviewing departmental staff and key outsiders, the Review Team was able to assess some of these more subjective factors and provide recommendations to the Attorney General relating to organization, office policies, training, supervision and related matters.

As set forth in this report, the Review Team detected some apprehension and flagging morale in the Department. However, staff interviewed appeared to be serious, earnest and proud to work for the Department and for the Attorney General. The apprehension is to be expected with the transition to a new Attorney General, with a backdrop that includes a political party change in the Administration, state budget difficulties, and a Department that was under the leadership of a single Attorney General for more than 9 previous years. Many attorneys and much of the support staff only served in the Department under Attorney General Bruce Botelho and knew no others.

The Review Team apprehended that the Department has operated somewhat in “silos,” and not as a strong office “team.” Some of this is attributable, the team believes, to vast geographic distances between offices. However, in the team's experience working in offices with similar issues, steps can be taken to impart a stronger “team” atmosphere, giving all staff a sense they have a “stake” in the Department and in each other.

The Review Team was particularly impressed with the high caliber of the attorneys providing legal services in the Department of Law. Client agencies and many judges also praised them for their preparedness, ethical behavior, hard work and experience. One client agency head said, “Attorney General Renkes should be proud of the folks in the Department.” A judge in Anchorage said he was impressed with the “knowledge and professionalism they bring to my courtroom.” While some judges thought improvement in isolated cases was in order and rectifiable with increased training, most had a favorable impression of the attorneys in the Department and found them to be very professional. Some judges were concerned about assignments in the Bush, but, again, office training and policies might ameliorate this. Especially high marks were given to those in the Office of Special Prosecutions and Appeals, who were regarded as distinguished and accomplished attorneys reflecting great credit on the office.

The Review Team expresses its sincere thanks to Attorney General Renkes and his staff, particularly Barbara Ritchie and Joan Kasson for their tireless work in facilitating the Review Team's tasks, travel, and work while in Anchorage, Juneau and Fairbanks. All departmental staff was courteous and helpful, and as CWAG teams before have said, Alaska is fortunate to have so many good people in its service. For the team members conducting the review, it was a rare and exceptional privilege.

Discussion and Recommendations

CHAPTER 1

STRUCTURE AND ORGANIZATION: CIVIL DIVISION, EXECUTIVE AND FUNDING

The structure and organization of the Department of Law's Civil Division is outdated and cumbersome. The current structure compounds several problems, including an excessive internal span of control, reporting lines being confused, old geographic silos, and accommodations to allow the promotion of senior attorneys. While the CWAG Reviews in 1995 and 1996 did not address these problems, they are highlighted now after years of positive changes in technology and communications, changes that obviate the need for dual geographic and specialty area supervision.

Eleven separate organizational units, each with a section chief, report both to a geographic Office Chief and to the Deputy Attorney General for the Civil Division. Many of the various sections have geographic units in several locations, each with a section chief. Thus, departmental organization mandates parallel geographic and subject-focused structures. But even that dual organization is not clear. In several units a few attorneys from one subject area report in to another subject area in either Fairbanks or Juneau because there are not enough attorneys in that subject area in that geographic region.

The problem is highlighted by the description of the Department's organizational structure charted in the Civil Manual (4th Ed., revised Dec. 2002), page 119 (rev. 1/27/03). It matches the organization chart in the Performance Review report prepared pursuant to Administrative Order 202, labeled in that report as the "Management Organization Chart." The chart lists the three divisions - civil, criminal and administrative, but in the Civil Division, it clearly subordinates subject-matter groupings to the geographic structure, that is, the "Fairbanks AGO" has a "Chief AAG," who reports to the Civil Division Deputy Attorney General; the "Anchorage AGO" has a "Chief AAG," who reports to the Civil Deputy; again, the "Juneau AGO" chief reports to the Civil Deputy. However, the Civil Division is also broken into eleven subject-matter sections. Notwithstanding the need for the Civil Deputy to "manage" the eleven subject-matter areas (each of which calls for a single subject-matter section chief), there is instead a supervising attorney who heads each section in each location and who then reports to the geographic "Office Chief."¹

¹ For example, Commercial Section has two section supervisors, one in Anchorage, one in Juneau; Government Affairs Section has two sections chiefs, one of whom is an office chief; Human Services Section has three section chiefs in each of the major cities, none of whom serve as office chief (yet each reports through a different office

This organizational structure serves, on the one hand, to diffuse subject-matter lines of reporting, and on the other hand, to overemphasize reporting through geographic management lines to the civil deputy. And, as noted, there is not a clean set of lines to begin with, as not every section has attorneys in every location. Unlike the Criminal Division, the Civil Division has no need for geographic-based attorney supervisors.

Indeed, the Department's Civil Manual provides that the "chief of each respective office assigns the day-to-day work of assistant attorneys general, who are primarily engaged in civil and appellate litigation. Selected attorneys may be designated as supervising attorneys for a section and, under the general supervision of the office chief, are responsible for establishing policies and procedures within their sections and for coordinating with the activities of other sections." Civil Manual, pp. 4-5. Implicit, yet unclear, in this description is the notion of a single supervising attorney "for a section." However, the office has, in many cases, multiple supervising attorneys within each section, based on their location. In practice, there are 22 supervising attorneys spread about the 11 civil division sections. While there are three office chiefs reporting to the Civil Deputy, which is an appropriate span of control, there is no central leadership for each section, save those four sections which have only one supervising attorney, i.e., Legislation and Regulations, Fair Business Practices, Environmental, and Collections.

This structure was apparently originally designed to balance geographic distances with subject area expertise. An additional explanation for the dual overlay of authorities is that it affords office chiefs to "manage" the day-to-day work of the office, keep in contact with the attorneys located there, oversee workload, travel, training needs, etc., the so-called "management" matters. However, as discussed below, the Review Team found that "management" and "supervision" tasks were confounded - - some office chiefs served as supervisors for those in their own section area, managers for the other section attorneys in their location, and sometimes were doing too little or too much of either.

Also, it appeared to the team that the dual overlay of reporting may have developed to allow several senior attorneys to be promoted. In most civil service structures, the easiest means to accomplish a promotion is to "promote" the attorney into a "supervising" position. Soon, supervisors appear everywhere, including several whom the Review Team found did not appear to supervise anyone.

As to at least two of the probable justifications for the existing overlapping structure - - geographic distances and the need to promote senior attorneys -- there are reasonable

chief to the civil deputy); Natural Resources Section and Transportation also have three supervising attorneys; Oil & Gas has two supervising attorneys; and Special Litigation Section has three supervising attorneys, one of whom is the Juneau office chief. See <http://www.law.state.ak.us/civil/index.html>.

alternative means to deal with the challenges.

A. Disengage from a geographic-based organization

Technology now allows the real-time and effective supervision of attorneys in civil litigation and general practice from great distances. It is now routine in the business world, in private law firms, and in governments to supervise their attorneys from remote distances. There is no longer the need to have one's supervisor sitting next door. E-mail, telephone, telefax, video conferencing, and occasional trips allow very competent supervision from great distances. Since the 1995 and 1996 CWAG office reviews, it has become commonplace and easy to attach documents, draft briefs, forms, court decisions, legal resources, and memoranda to one's e-mail. Supervising attorneys can electronically edit draft documents by using "red line," "strike out," and other techniques both on- and off-line, and many prefer this to any other means. The efficiencies and cost-savings in this kind of direct and instant supervision are self-evident.

The Review Team recommends, as set forth below, that the Department of Law be re-structured to (1) eliminate geographic Office Chiefs, and (2) align the civil division sections without regard to geography, each section with a chief who reports directly to the civil deputy. The reasons are numerous and compelling:

- U subject-matter grouping provides a clear line of reporting by those responsible (a "section chief") for a particular area, e.g., natural resources, oil & gas, to the civil deputy and to the Attorney General, ensuring consistency in policy, direction and mission
- U subject-matter grouping enhances cohesion among the section members
- U geographic-based reporting (or worse, geographic based reporting overlaid with subject-matter reporting) engenders confusion, isolation, "bypassing" the regular channels or unnecessarily "adding" to the regular channels; it confuses management with supervision; and it places in the chain of reporting an individual who may not have the subject-matter expertise, thereby encouraging the line attorney to seek substantive supervision from his or her own section mates, and using the office chief only for administrative matters.
- U geographic-based office chiefs tend to get bogged down with administrative matters at the expense of substantive supervision; the more time the office chief dedicates to preparing evaluations and administrative matters, the less time he or she has for supervising attorneys or doing his or her own assigned work.

Most all state Attorney General offices have transitioned away from a system of geographic-based “office chiefs” to structures based on subject matter or client representation, even if there are some geographic subdivisions within the subject matter. For example, in California, the largest office of the state Attorney General's Office is in Los Angeles, almost 400 miles from the executive office in Sacramento; San Diego's office is more than 500 miles from Sacramento. Practically speaking, to visit the offices requires flying on a commercial airliner, much the same as in Alaska. The California AG office moved to a subject matter-based Civil Division (and a separate Public Rights Division, which handles pro-active matters, civil rights, antitrust, environmental, etc.), with a single division chief, usually located in Sacramento, and individual section chiefs, wherever located. For example, in the Civil Division, the single Torts Section chief supervises all Tort Section line attorneys, wherever located, from his office in Sacramento, and he alone reports to the Civil Division chief in tort matters.

In California, each Section Chief manages day-to-day assignments, controls or coordinates the litigation of his or her section in a centralized fashion, reviews documents, pleadings and policy issues in his or her area, approves requests, manages and administers the section and serves as the sole point of contact and reporting official to the division chief. For ease of control and management, where there is a large number of attorneys in a section, the section chiefs may designate geographically-based lead or supervising assistants, so that there may be a lead torts attorney in San Francisco, one in Los Angeles, etc., but it important to note that this designation does not overlap any other authority. Each line attorney reports through a single line of command, through a local supervising attorney in the section, who reports to the single section chief, wherever located, who reports to the division chief.

Other offices have accounted for remote offices with other means, such as in Arizona. There the Attorney General has designated a special counsel for Tucson, who assists the AG with Tucson-related matters and who can serve as an important point of contact for the Phoenix-based AG. The special counsel does not, however, overlap or control or serve as a conduit between line attorneys and their section and division chiefs.

In Texas, the civil litigation divisions are centralized by subject matter, no matter which office is handling the litigation. Some divisions have regional offices, such as the Consumer Protection Division which maintains regional offices in Austin, Dallas, El Paso, Houston, Lubbock, McAllen, and San Antonio. Some large offices do maintain regional assistants-in-charge, such as the New York Attorney General; the crucial difference there, however, is that the regional line attorneys are *assigned*, as civil litigation generalists, to a regional office, such as Syracuse or Buffalo, to handle all civil cases there. They are *not* assigned to the subject matter-based Bureaus, such as Consumer Protection, Claims or Civil Rights, which generally operate only in the two centralized offices in Albany and New York City. Thus, each regional office civil litigation line attorney reports to his or her Regional Assistant-in-Charge, who maintains contact with and coordinates with the Bureau

Chiefs on substantive matters. In addition, there is a Deputy for Regional Offices, who oversees all the regional attorneys administratively, and who is on a par with the other top Deputies. Again, New York generally avoids the overlap of substantive authority or lines of command by having all regional line attorneys assigned to their regional office as “fungible” generalists, reporting to a regional chief who makes the day-to-day assignments in all cases that arise in the region and who supervises them; the regional line attorneys are not simultaneously in a section or bureau.

CWAG will provide the Attorney General under separate cover sample organization charts from other states, including Washington, Oregon, California, Arizona, Wyoming, New Jersey and others, if they may be of assistance in evaluating the appropriate structure.

B. Promote senior attorneys as non-supervising attorneys

It appears that the Alaska personnel classification system allows a senior attorney to obtain a position that allows him or her to keep senior pay levels, even if the senior attorney is not supervising other attorneys. The justification process to accomplish this goal, however, is apparently fairly difficult. Of course, as the body of line attorneys ages and gains experience, attorneys will be tempted to leave public service after 8-10 years of experience for a more lucrative engagement; what happens is that the *best* attorneys will leave, leaving the Department with attorneys who may not be as energized or vigorous. It is imperative to have the ability to promote attorneys moving into seniority with pay and “assistant” positions, without making them a full-fledged supervisor. Every senior attorney cannot be a supervising attorney.

At the same time, the use of the Department's senior attorneys as mentors, recruiters and trainers presents a superb opportunity. These attorneys provide a continuity of expertise that cannot be obtained by any other means. As discussed elsewhere, the Review Team recommends an active recruitment program and an improved use of mentoring programs to achieve optimum attorney training.

The Review Team recommends the Attorney General assemble a task force to focus on this issue as soon as possible and solve the senior grade issue so that valuable senior attorneys can be paid their worth without creating unnecessary supervisory positions. This issue implicates not only the organizational structure and weight, but retention of personnel and quality of legal services.

C. Supervision versus Management

In addition to structural artifacts (or maybe because of them), the management system does not really encourage “supervision.” Most supervisors in the Department of Law, manage full case loads and handle administrative tasks, but it appeared to the Review Team that very few of them really “supervise” the work product of the attorneys assigned to

them. In interviews, the team found that many supervising attorneys did not routinely read or edit pleadings, memoranda and documents prepared by line attorneys in their section. Under standard span of control principles² and the realities of legal practice, a supervisor should only actively supervise a limited number of attorneys; an optimum span of control is probably between five and eight self-motivated, competent attorneys. When a unit becomes larger than eight to ten attorneys, it should be subdivided into new internal sub-units with “assistant supervisors” named for each sub-unit, who then report to the supervisor.

In the Department of Law, most supervisors handle full time case loads in addition to their “supervising” responsibility. Additionally, supervisors may be fully engaged with non-legal management matters. Overworked supervising attorneys cannot effectively or efficiently supervise the work product of others. While some management experts favor a flatter, broader span of control, allowing more access to the leader and less hierarchical control, the reality in a government law office is that time-consuming legal work and critical communications are core features of supervising government lawyers. An excessive workload and too many lawyers to supervise detract from the quality of supervision, undermines active mentoring and lowers morale.

Many administrative and non-legal management tasks are inevitably on the plate of the supervising attorneys, but they need not consume so much of their time and energy. The Department should examine what specific non-legal supervisory and management tasks are taking the time of each supervisor; a survey and a couple of week-long time tracking exercises could help determine this. What can be delegated, reassigned, or coordinated with the non-lawyer office managers should be moved off the plate of the supervising attorneys. The Department should examine the case load of supervising attorneys, by examining work and time sheets and look to building in more quality legal supervising time.

D. Reduce the number of sections in the Civil Division

The Review Team believes that the number of sections within the Civil Division - eleven - gives the Civil Deputy less than optimal command, control and communications with his subject matter-based supervising attorneys. As noted above, while the Civil Deputy has only three office chiefs, a reasonable number of reporting subordinates, there are really 22 supervising attorneys in the substantive sections under him. While the incumbent office chiefs may serve him well in the regular reporting functions, they do not head up the

² See, e.g., <http://home.att.net/~nickols/Span.pdf> (Harvard Business Review May-June 1956); <http://bush.tamu.edu/pubman/abpages/1999/meier99.html> (abstract, link); James Higgins, *The Management Challenge*, Second Edition, Macmillan, 1994; <http://teep.tamu.edu/pubs/gulick3.pdf>.

sections. The Review Team believes that the Civil Deputy ought to have regular reporting lines to him from his substantive sections. Eleven sections may be too many.

The Review Team was not equipped to make an adequate assessment of where any consolidation ought to occur. Given Legislation and Regulation is small, the number of sections requiring management is not onerous. The Review Team believes it is not an impossible number of sections to manage, just not optimal. The more important task, the team believes, is to align the supervision in the Civil Division along subject-matter lines, with a responsible section chief in each section and an appropriate number of assistant supervisors within them. Over time, the Department might consider where or how it can reduce the number of sections to six to nine. Consolidation need not mean dismantling a unit, but simply placing two sections together as units of a single section, with unit heads.

E. Executive Office of the Attorney General

Presumably as a result of funding struggles with the Legislature over several years, the Attorney General's immediate staff is limited to one Special Assistant and an Executive Secretary. This deprives the Attorney General of flexibility; he is unable to focus legal advice on his own, the Governor's or the Legislature's emerging priorities because he has no immediate staff to do so.

Thus, several key functions could use improvement, including coordination on ethics advice, higher coordination of appeals, counsel on legislative initiatives, legal advice on public finance, advice on particularly sensitive issues such as state sovereignty and monitoring of especially sensitive cases. In addition to these legal concerns, the Attorney General's office should engage in a coordinated public relations effort. Without question, the Attorney General's ability to engage in "pro-active" initiatives is directly impacted by not having sufficient immediate staff.

As listed below, the recommendation of the Review Team is that an executive legal staff be established in the Attorney General's immediate office to focus on these matters. The scope of the responsibilities of such a staff, and the person who supervises it, depends to a great extent on the Attorney General's own management style. Several options are appropriate.

One option is to include a Chief of Staff within the Attorney General's immediate staff with the following subject areas included: public relations, ethics, budget, special issue advice (e.g., state sovereignty), key legislative initiatives, governor's priorities, etc. The Chief of Staff could focus on this immediate unit and coordinate the Attorney General's executive priorities. Such a unit requires at least one other attorney, one who, like the Chief of Staff, can demonstrate keen legal and policy skills, sensitive to unique legislative and governmental matters; and a public affairs specialist. If this person focused only on participating in and supervising this immediate office unit, the position could also be called

Chief of Attorney General's Immediate Staff, or, as found in many U. S. Attorney Offices, "Chief Executive" (Attorney General). Although the "Chief of Staff" moniker within an agency can sometimes lead to confusion of roles, it generally implies the supervision of immediate staff.

If the Attorney General desires someone to perform the supervision of the immediate office staff and perform an alter ego role, both inside and outside the Department of Law, he might want to consider creating an Assistant Commissioner position. Ultimately, the title is not as important as the function desired by the Attorney General.

Whether "Assistant Commissioner," "Chief of Staff" or other "Special Assistant," this person can be used as a "super" Deputy, if the Attorney General wishes, to help facilitate the flow of information to and from the Attorney General, participate in decision-making and make recommendations to the Attorney General on departmental legal, policy and administrative matters. As long as that model does not unduly "subordinate" the Deputies, this person can be a valuable facilitator and coordinator.

Other positions on the Attorney General's immediate staff could include one or two special legal counsel on executive staff to assist the Attorney General exclusively on top policy and legal matters. These positions could be called Special Assistant Attorneys General or Special Counsel. Many state Attorneys General have one or more attorneys in this position, helping on difficult issues such as tobacco litigation, Indian policy, sensitive multi-state investigations, oil spills, gambling, and ethical obligations. While "Special Assistant" and "Special Counsel" are frequently terms used for private, outside counsel retained by the Attorney General, nonetheless many offices use these terms.³ Another more neutral title is "Counsel to the Attorney General."

The hiring of one or more public relations specialists, savvy in media relations and public affairs is vital to the effective operations of an executive staff and the Attorney General's pro-active program. Currently, the office's press policy notes that the "Department of Law uses the governor's press office to issue its occasional press releases ..." Civil Manual, "Dealing with the Media," p. 14. While the relationship of the Attorney General, as a cabinet member, to the Alaska Governor is closer than in most states, nothing should distract from the AG's ability to use sound public affairs advice on a daily basis from an expert.

The Civil Manual provides sound advice to line attorneys on how to handle media inquiries, pp. 14-18, but it does not and cannot ensure that optimal relations with the press are maintained. Significantly, the Attorney General has special responsibilities in criminal

³ California: "Special Assistant Attorney General;" Oregon: "Special Counsel;" Hawaii: "Special Assistant Attorney General."

prosecution matters with regard to public information and with the District Attorneys in his Department. Even where the Governor has the principal media “shop” in Alaska government, the Attorney General and the District Attorneys would benefit immensely from one or more press specialists. Given the unique structure of Alaska's AG office, one option would be to designate an individual in the Anchorage DA's office who could serve the entire AG's office and the special public role of the Anchorage DA. (See discussion below, Chapter 2, on role of DA.) If funding permits, another option is to have one press secretary serve the Attorney General in Juneau and another other media specialist “attached” to the Anchorage District Attorney's Office.

F. Funding Issues

Attorneys in the Department of Law are being expected to handle larger caseloads of more difficult cases plus additional responsibilities imposed by statutes, case law and budget demands, all with the assistance of fewer, more poorly trained and inadequately compensated support staff. See Chapter 3, below. The funding crisis in some parts of the office is severe. Additionally, the office faces the constantly decreasing pay, on a relative basis, earned by the dedicated attorneys. All of these issues will be dealt with in other parts of this report. This discussion, however, focuses on the broad issue of inadequacy of funding.

There is no other way of saying it. The Department of Law critically needs additional funding. In this time of reduced state revenues and increasingly competitive funding demands, this may not be possible. If not, those making these tough choices must understand the consequences, particularly those that might impact the deterrence of criminal conduct. But, if more money cannot be made available, it is essential that the Attorney General be given more flexibility to target the money that is available. Previous struggles between earlier Attorneys General and Governors on the one hand and the Legislature on the other hand undoubtedly led to various legislative restrictions on the Attorney General by eliminating budget flexibility and specifically targeting funds to narrow purposes. The only way to effectively and efficiently manage an office during severe budget limitations is to be able to move staff and resources from one area to the next, and from one priority to the next, as demands require.

Funding sources outside the state budget must also be explored. Federal funds are available for certain civil and criminal efforts. The Attorney General might consider retaining a firm that specializes in locating federal funding options to assist the state in ensuring that it is taking full advantage of all opportunities. In both the civil and criminal areas a task force should focus on capturing some portion of the fees and fines paid from civil enforcement and criminal actions, to the extent that these are not “dedicated funds” prohibited by the Alaska Constitution, art. IX, sec. 7. Certain significant sums now find their way back into the Department of Law's budget, but in other areas this is not the case. It may be that legislation is ultimately needed to accomplish this purpose. If so, it should be vigorously

pursued.

The 1996 CWAG Office Review recommended examining surcharges on criminal fines, as a “program receipts” system, p. 8-9, to avoid being a “dedicated fund,” but the team was unable to determine whether this option was considered. Similarly, other recommendations for finding funds were discussed in the 1996 report and should be re-examined.

A substantial portion of the Civil Division budget is funded by RSA’s. The RSA process deserves a concentrated reform effort. The Review Team suggests that an RSA task force be created to consider several new RSA initiatives. First, there are certain state agencies (e.g. the Corrections Department) that demand substantial resources and that do not pay for them, as other agencies do, through RSAs. Second, the calculation of the hourly rate for RSA’s deserves a fresh look. Currently, the calculation is being done on an indirect cost pool method, taking the costs of most of the units in the Civil Division, adding them together and then dividing that sum by total hours worked by all such units to get a dollar amount per hour. It appears that some overhead costs may not now be included in the cost pool. Direct cost pools should also be considered. For example, if a particular legal unit did all of its work for one particular state agency, that unit’s direct costs, divided by the hours that unit works, *plus an indirect overhead allocation*, could be charged to the agency. The benefit of such an approach is that specific (and perhaps, more expensive) training resources, support staff, IT/IS, attorneys, etc., could be targeted to that unit. Of course, the cost of the unit’s lawyers on an hourly basis would increase, but so would the service received by the state agency. Almost all state agency clients were pleased with their service, and many would be willing to pay more to see that service improve.

Finally, RSA funding is uneven and illogical. For example, the legal services for the Department of Environmental Conservation uses an RSA; work for the Department of Fish and Game does not use RSA funding. Corrections work is funded from the General Fund. The Department needs to overcome the historical bases of the various funding mechanisms and seek more logical and consistent funding throughout the Department.

Recommendations:

1-1. The Department should develop a clean, clear, lean reporting structure. The Department should eliminate Office Chiefs and multiple geographic-based supervising attorneys and replace them with subject matter units. The Department should consider reducing the number of sections, and Section Chiefs, to between six and nine. Such an organizational structure would allow for a Deputy Attorney General for the Civil Division with six to nine substantive Section

Chiefs. This would create a optimal functional management team for the Division.

1-2. The elimination of Office Chiefs may leave some tasks (facilities issues, training, support staff, etc.) without a home. This could be resolved by creating a deputy to the Deputy Attorney General or by assigning a person to handle these administrative responsibilities.

1-3. Each Section Chief, some of whom are now responsible for attorneys in several geographic areas, must actively supervise the work product of his or her attorneys. Case loads for supervisors need to be reduced and adequate training provided to accommodate this new expectation. In addition, the Deputy Attorney General must supervise the Section Chiefs' supervision.

1-4. The Attorney General should urge the Legislature to fund the creation of an immediate Executive Office of the Attorney General with the following functions: public relations, appeals, public finance, special issue advice, legislative and gubernatorial initiatives, and ethics.

1-5. The Attorney General should decide the scope of responsibilities of the supervisor of this unit and select a title.

1-6. The Attorney General should hire one or more public affairs specialists, including one who is familiar with criminal matters, to serve as an advisor, media contact and assistant, housed in the Anchorage DA's office, and another specialist in Juneau, to serve the Attorney General more immediately in key executive matters.

1-7. The Department should seek to increase the funding of the Department of Law.

1-8. The Department should seek to remove barriers to more flexible funding of the office.

1-9. The Department should seek outside funding sources, particularly federal ones; a firm to assist in finding funds could be retained. The Department should seek to retain some portion of fines and penalties.

1-10. The Department should closely examine the use of RSA's including forcing other state agencies to pay their fair share for the work they receive and exploring cost allocation methods for calculating the dollar value of each attorneys work that more fairly represents the value provided.

CHAPTER 2

CRIMINAL DIVISION POLICIES AND ISSUES

CWAG performed a targeted look at the Criminal Division in its 1996 CWAG Office Review report. Many of the recommendations in that report are still pertinent to the conditions in the office today. This report will elaborate further on both those issues and new ones, but in any case the Review Team recommends the Department methodically approach the recommendations of the 1996 report to gauge its progress, particularly with respect to the handling of misdemeanors and plea policies. With respect to certain matters, such as the pre-indictment hearing system in Anchorage and the vertical prosecution model there, line deputies in Anchorage reported general satisfaction. Other issues are newer perceptions by the CWAG team, such as the need for a stronger public presence and criminal division leadership in Anchorage, Bush assignment policies, various personnel, workload and personnel issues.

An issue of continuing concern has been the “trailing calendar.” Many prosecutors expressed frustration with the trailing calendar, which, in their view, has become so unmanageable that, on any given trial day, the attorneys have little indication of which cases will be called, which defendants will plead and which cases will be tried. The result is wasted time, wasted expense, unneeded witnesses being called, police officers “cooling their heels,” waiting to learn the status of the case that they investigated. Accordingly, pleas are taken late in the process; this “back-loading” of the cases is highly counter-productive. The pre-indictment hearing process in Anchorage has been a means to deal with the problem.

The Anchorage District Attorney's office used a pre-indictment hearing for many years, but with the change of personnel over the years it has fallen into disuse. The theory behind the pre-indictment hearing is to negotiate as many settlements prior to indictment as possible, and not wait until a case is called for trial. The District Attorney can settle the cases that can be settled and try the rest. Consideration should be given to establishing a “filing unit” in the various District Attorney Offices. A pre-indictment hearing process must be staffed with more senior prosecutors who can screen a case, determine its strength and decide what charges will be filed. They should negotiate a plea, and if a deal cannot be struck, take the case to the Grand Jury and ultimately to trial. In those circumstances, the state must be committed to proceed to trial unless there are extraordinary circumstances for not doing so. To make the process workable, the prosecutor and defense counsel will have to agree to a continuance of grand jury time requirements. This agreed-upon pause in the proceedings gives counsel the opportunity to weigh the merits of their respective cases. During this time witnesses can be interviewed and additional investigation done if more is required.

Despite heavy and sometimes impossible caseloads, the morale and spirit of the district attorney's offices is relatively high. It could be better. The feeling that there is *no* end in sight to demanding caseloads is by far the greatest depressing factor. As discussed below, it is noteworthy that none of the offices have a case-filing protocol that allows them to plead or refuse to file lower-class cases so to devote time and resources to the more serious ones. Line prosecutors are routinely working weekends and three-day holiday weekends, and there is a general view among them that they work longer and harder than attorneys in the civil division sections. Some of the mid-sized and smaller DA offices are heavily "overworked and underpaid." Some line prosecutors have suggested a salary parity review with the civil division. The CWAG Review Team is not equipped to evaluate all these issues fully, but notes that it is not healthy to have a rivalry that eats at departmental morale. It may be sensible to evaluate certain pay, "comp" and "flex" time and personnel issues in the light of criminal division workload and demands.

Data examined by the Review Team indicated felony workload increased 54% since 1993, but general fund support increased only by 19% in the same time period. Appeals were up 45%, but funding for that work was up only 24%. See document entitled 1993-2002 year-by-year caseload and staffing.xls, dated 2/24/2003. It is also expected that misdemeanor referrals will increase. This demonstrates the clear impact of insufficient staffing and resources to handle increased workload and demands. Morale and "burnout factor are correspondingly affected. The Criminal Division has been losing valuable attorneys and there are unfilled vacancies, forcing a yet higher workload on the remaining line DA's. As discussed elsewhere in this report, the Criminal Division is also affected by pay issues, lack of "flex time," less than optimal communications, geographic differential pay and IT support.

Additionally, it is important to note that the type of misdemeanors being handled are increasingly more serious: instead of the typical misdemeanor assault case arising from the proverbial bar fight, more cases of domestic violence are being prosecuted. Drunk driving cases continue unabated. Projections that case numbers should go down as crime "decreases" in Alaska are also undermined by the nature of police work. Any downturn in crime allows the police agencies to complete old investigations and refer them for prosecution. As the courts have become sensitive to overcrowding issues in Department of Corrections facilities, they often order more supervised probation. As more offenders are on probation, there is an increase in cases for probation revocation and imposition of suspended sentences. This latter issue is a public safety issue which should concern the Attorney General and the Legislature. If there are high probation revocation figures, it reveals a need to evaluate the wisdom of allowing longer supervised probation periods and tolerating chronic shortages in prison beds.

A. Shift of misdemeanors from municipalities to the state

The criminal division workload is aggravated when municipalities get out of the

"criminal business." The result is that local police, in those cities, issue "state" citations to be handled by the district attorneys where these were previously handled by the city attorneys. This problem exists in particular in Fairbanks where the additional workload has been absorbed in the DA's office without additional staff. The issue was discussed in the 1996 and 1995 CWAG Office Review reports, which noted the unfunded mandate arising from increased misdemeanor cases shifted to the state. The report then recommended, and the Review Team continues to recommend, a concerted effort at prioritizing workloads so that less critical cases are dismissed. Still relevant today is the 1996 recommendation to make this a priority with the Legislature; the municipal governmental practice of shifting these cases to the state should be prohibited, see 1996 report, p. 10, or the Legislature should fund the Department accordingly.

B. Prosecutorial guidelines need attention and promulgation

The Review Team ascertained that many deputy district attorneys are lacking or are unaware of any direction or guidance relative to filing standards, plea bargains, immunity and priority of work, and some are reluctant to make decisions on their own. Consequently, they try to do it all. Obviously this has a depressing impact on staff and can lead to poor morale and high turnover. It is imperative that more specific guidelines for filing and pleas be established. The district attorneys must be given guidance to prioritize their work and control the workload. In a January 2003 Performance Review prepared for the state's Office of Management and Budget, it is noted that the Criminal Deputy will be reviewing and revising the Criminal Division Manual, which should allow for an increased focus on priorities and mission statement. Additional guidance on filings, pleas and standards, especially as to the minor crimes, should be forthcoming from the central office and the Criminal Deputy, acknowledging flexibility at the local offices to implement that guidance. The 1996 CWAG report noted complaints of "micro-management" by the central office, p. 35; while this may apply to some personnel issues, it now appears that, as to prosecution policies, the central office is not helping enough.

While the 2003 Performance Review charts the number of cases prosecuted as declining in many cases, e.g., misdemeanor domestic violence assault prosecutions declined by 100 cases or so in two years, the data does not and cannot explain whether the decline in prosecutions is due to a decline in the crime, in the decisions to arrest and refer the crimes, in the decisions to prosecute the crime or whether some cases are the result in a reduction in charges, pleas or otherwise. Also not clear from the data is whether some declining numbers of cases reflects a declining workload. In fact, as mentioned, felony and misdemeanor drunk driving numbers are up. The Review Team was of the impression that the work load has gone critically up, not down, especially relative to the commensurate funding. This may be due to the complexity of cases, increase in the number of felonies and drunk driving cases, work involved in cases in which charges are reduced but not dismissed or rendered violations, overall lean prosecutorial staff, or increased time in handling calendars, discovery, and ancillary matters. In addition to the "Criminal Caseload,

Funding and Attorney Staffing 1993-2002" study already prepared, CWAG recommends the Department conduct another, relatively simple, internal staffing study, with an evaluation of cases by complexity level, number of misdemeanor cases "inherited" from local jurisdictions, geographic distribution of cases, and time spent by deputies in discovery, pre-trial, trial and related activities. A simple time-keeping system over a set period of time could be the basis for much of the data; survey questions could amplify the trends and inform the central office in what ways the workload has become so demanding. Prosecutors do not want to be "bogged down" with keeping statistics, but certain information is vital to evaluate and manage the division well. Already collected data on caseload and funding is crucial to the analysis, but additional data and analysis may lead to further improvements.

Other office policy issues were raised with the Review Team by line prosecutors. Some sought an effort to obtain a court rule allowing district attorneys to appear telephonically at the discretion of the DA, not the court. Also desired was authority for investigative and mid-trial immunity being devolved on the DA and an increased emphasis on sentence bargaining in non-violent offenses and probation cases. As recommended in the 1995 and 1996 CWAG reports, misdemeanor and sentence appeals should be handled by OSPA. Information Services and automated case management issues are addressed separately.

C. Role of prosecutor not understood

Almost to a person there was uncertainty over the role of the district attorneys. Some questioned whether the district attorney is a prosecutor first and then a manager and community leader second. Or is the district attorney a manager of the office and a leader in the community first and a prosecutor last? The Review Team agreed with many who suggested the DA's should have a "higher profile" in the community, but until the proper role is determined and communicated by the Attorney General, the district attorneys are uncertain about their purpose and goals. Without defining this role for the appointed DA's, the line prosecutors do not know what to expect from the district attorneys, nor will the district attorneys know where they should apply their efforts.

This question arises because a significant number of members of the legal community outside of the district attorney's offices advised the Review Team that the district attorney needs to play a more visible public role in being a community leader in the area of criminal justice, particularly in Anchorage. There was a desire to see the district attorneys wearing a "white hat" working with law enforcement, the public, victims groups on criminal justice issues, a leader in setting criminal justice direction and policy in their district and in Alaska. This may require an assessment of the press release policy and an increased emphasis on a media presence in Anchorage. Additionally, those interviewed expect that the DA's can and should play a role in educating the public. These persons observed that because the district attorneys currently are not playing a leadership role, a void is created,

which at various times is filled by other members of the criminal justice community. As a result, often times there is not a credible public figure to speak to criminal justice issues

The Review Team recommends tightening the mission statement and goals of the district attorneys, including the more active participation of the DA's to inform and educate the public about crime, prosecution and public safety, consistent with the ethical constraints on prosecutors. This is particularly true for the Anchorage office, where the majority of Alaska's media outlets are based. Once it is determined what role the district attorneys should play relative to public visibility, it must be widely communicated to staff and to the public. This will help the legal community and the public better understand what they can expect from the district attorney, and the public will be able to better identify with the new district attorney role. The Review Team recommends a strong public presence with the Deputy Attorney General for the Criminal Division resident in Anchorage, where the vast majority of criminal cases are heard and where the media is located.

D. Training for prosecutors and managers should be increased and enhanced

Many in the office were frustrated by a lack of appropriate training for managers. Supervisors in the district attorney's office receive almost no training on managing an office or staff. One interviewee said: "[they] learn from their mistakes." All supervising staff in the district attorney's office should build the skills and the tools they need to succeed. Training in personnel, supervision, dealing with the press, leadership, management and other skills that may not come naturally should be emphasized.

As discussed in Chapter 6, overall training for criminal law deputies has slid since the 1996 CWAG report. There is a limited amount of money available for sending attorneys to the National Advocacy Center (NAC) and the National District Attorneys Association (NDAA), and other national training programs. Limited employee orientation, lack of periodic and regular training in the substantive criminal law and procedure and insufficient mentoring of line prosecutors has taken and will take a toll on productivity, morale and effectiveness in resolving cases. One area that is difficult, but essential, for line prosecutors is training in trial tactics and strategy. Specialized classes and mentoring are the best means of imparting the experience of seasoned prosecutors. The Department should make a concerted effort to develop an active mentoring program using its senior attorneys to train and help develop the newer attorneys' skill sets and overall performance.

In addition to the annual DA's conference and training session, the Review Team recommends assembling a trial tactics and strategy training team to conduct day-long training seminars in Juneau, Anchorage and Fairbanks at least once a year *apart* from the annual meeting in the fall. Alaska should consider polling for top flight prosecutor/trainers from the NDAA or other states, such as Washington and California, and bring in at least one out-of-state prosecutor/trainer as part of the team to get perspectives not otherwise appreciated by in-state prosecutors. It may be cheaper to bring one out-of-state expert to

Alaska to train many attorneys than to send the many attorneys to the NDAA and NAC programs. Finally, several judges commented on lack of preparedness in court rules and criminal procedure from some line prosecutors. Increased training in court rules and procedure should be a priority for the Criminal Division.

As mentioned elsewhere, the Department should place increased reliance upon its senior criminal law attorneys serving as mentors for the younger attorneys. This requires allowing for (and accounting for) valuable time to be set aside for the appropriate assignments, accompanying younger attorneys to court and follow-up. Active mentoring should be treated as training time in the Department's overall training program.

E. The Bush assignment system requires complete re-evaluation

Uniformly, those line attorneys interviewed in the DA offices viewed the Bush program, requiring a two-year commitment to the rural locations for new hire deputies, as negatively impacting morale and turnover. The Review Team concludes that the Bush assignment program is a failure in practice. Rather than forcing attorneys to take a Bush assignment, the team believes that every effort should be taken to encourage and entice them to accept such an assignment. Inducements could include continued pay differential, state housing, state-supplied automobile, student loan deferral or forgiveness, and a "Bush-time" credit where an attorney's employment time credit is increased.

Some judges with cases in rural areas, whether on assignment or resident, complained about junior attorneys being assigned to the Bush who were wholly unprepared to handle a caseload in those areas. In relative terms, the caseloads are significant. The working conditions are generally subpar. Kotzebue is known to have flooding of water in the facilities designated for the resident attorney. IS support is also poor. The Review Team suggests that a concerted effort by the Department to improve the work conditions, training and IS support of Bush prosecutors is critical to the efficacy of the rural prosecutions and to induce volunteers to serve there.

F. Juvenile criminal prosecution should be examined for placement in the DA's offices

It was discovered that juvenile criminal prosecution is *not* part of the district attorney's office but rather is part of Child Protective Services. The juvenile prosecutorial role seems poorly matched with child protection. This should be reviewed to determine whether juvenile prosecution is better handled in the district attorney's office. Juvenile prosecution could be a training and proving ground for other positions in the district attorney's office. Most Western states prosecute juveniles from the district attorney or principal prosecuting attorney's office (usually in the states' counties), e.g., King County, WA, Yakima Co., WA, Lane Co., OR, Sacramento Co., CA, Maricopa County, AZ, etc. The Review Team recommend consulting with successful offices that accomplish this from the DA's office; NDAA is a resource that can be of assistance.

G. OSPA should handle misdemeanor, sentencing and interlocutory appeals

The Review Team noted that one of its recommendations in the CWAG 1996 Report was partially implemented and, apparently, abandoned, namely, that OSPA handle all misdemeanor appeals. Some line prosecutors were uncertain what the policy was. The Review Team learned that OSPA is greatly respected for its collective knowledge in the criminal law and its appellate skills. It is held in high regard by all those interviewed. It is for that reason that the Review Team believes that misdemeanor appeals and sentence appeals are best handled in OSPA.

The standard objection of an appellate shop to misdemeanor appeals is that they are fact-specific, fact-driven and highly variable. However, it is also true that specialization has its benefits - in this case, the appellate skills, knowledge of the appellate courts, accumulated knowledge of the law, and the more reflective and thoughtful environment of an appellate “shop” are all tailor made for filing these cases. Sentence appeals may involve different facts, but the trial attorneys can memorialize these with ease and appellate lawyers know the template to use in arguing these matters.

With respect to interlocutory appeals, particularly in the homicide and high profile cases, the Department should institute a system whereby an appellate attorney in OSPA is assigned to the case, to partner with the trial prosecutor and to have the background of the case at hand. If and when an adverse ruling comes pre- or mid-trial, such as the granting of a suppression motion or other evidentiary matter critical to the prosecution of the case, the matter can quickly be handled as an interlocutory appeal. OSPA is best equipped to handle such matters and is likely most up-to-date on the relevant jurisprudence in any case.

Recommendations:

2-1. The Department should explore procedures to overcome the disadvantages of the “trailing calendar” system and consider use of the pre-indictment hearing process.

2-2. The Department should make it a priority either to resist the unfunded mandate arising from misdemeanor cases being shifted from various city attorney offices to the district attorneys or to convince the Legislature to fund the Department of Law accordingly.

2-3. The Department should re-examine, improve and communicate its office policies and guidance to district attorneys on standards for filings, immunity and pleas.

2-4. The Department should place its Deputy Attorney General for

the Criminal Division in Anchorage, where the majority of criminal cases are heard and where the media is located.

2-5. Training for the appointed district attorneys in personnel, supervision, dealing with the press, leadership and management should be emphasized. The Department should make a concerted effort to develop an active mentoring program using its senior attorneys to train and help develop the newer attorneys' skill sets and overall performance.

2-6. Line prosecutors need additional training in court rules, pre-trial and trial procedures and trial tactics and strategy; experts should be invited to conduct periodic DA training more than the once-a-year conference.

2-7. The current Bush assignment system should be dropped; inducements should be considered to attract volunteers. Bush facilities and resources need considerable improvement and investment.

2-8. It is recommended that juvenile criminal prosecution be handled by the district attorney's offices, not as part of Child Protective Services.

2-9. OSPA should handle misdemeanor appeals instead of the district attorney offices.

CHAPTER 3

SUPPORT STAFF FUNCTIONS

The Review Team met with members of the Attorney General's Office support and attorney staff in Anchorage, Juneau, and Fairbanks to specifically inquire about support staff issues. The interviewees represented a wide spectrum of responsibilities from working in a District Attorney Office to providing general support to the Attorney General's Civil and central Criminal Divisions. Despite the diversity in geographic locations and responsibilities, the issues and concerns were surprisingly consistent.

Many support staff felt underutilized and overworked. At first glance, these characterizations may seem inconsistent, but they address two different factors. Because most of the attorneys who come to the office are computer literate, they do most of their own word processing. The work that the law office assistants are left doing - - addressing envelopes, service of process, compiling tables of contents, xeroxing documents - - could be done by administrative clerks at a greatly reduced price. On the other hand, law office assistants could handle quasi-paralegal responsibilities if trained and given the opportunity. Many felt that the opportunities to perform more challenging responsibilities would help stop the loss of experienced law office assistance from the Attorney General's Office.

All spoke of a lack of formalized training and very little opportunity to grow, learn and promote. Most have received training on the job, but it is ad hoc, sporadic, and is offered only when there is time, which is not very often. There is insufficient quality orientation for new support staff. Some reported they were asked to sit down alone for three days and read the handbooks and manuals. There is no standardized mentoring or orientation program for them. As discussed in Chapter 6, a permanent set of training opportunities should be developed to give law office assistants the opportunity to grow and become more proficient in their jobs.

The Review Team quickly ascertained that the pay that support staff receive is not competitive to what is offered in the private sector. Often, when a law office assistant acquires some proficiency, that individual is recruited by a private firm with the promise of more money. Because of poor pay scales, like the lack of mentoring and training, many of them do not feel they have much at stake in the office, they "do their time" and morale suffers accordingly. As with other positions in the Attorney General's Office, ways to increase the pay of the law office assistants must be explored, but in lieu of this, other non-financial rewards need to be identified and explored.

Even though the work itself may not be very challenging, some support staff reported they are buried by an oppressive workload. Frustration exists because even within an office there is not a fair distribution of work. As in any organization, those who are

competent and who seek responsibility will get the assignments, and sometimes they are the only ones doing the hard work. Unfortunately, they are the first to go.

Finally, a serious problem is revealed where virtually all the support staff interviewed reported to the Review Team they felt under-appreciated and under-valued by the attorneys they work with and by the Attorney General's Office. They reported that they are made to feel unimportant and easily replaceable. Curiously, most of the attorneys gave high marks for their professionalism and the quality of their work.

The Department should give immediate attention to this problem. It is suggested that a "staffing" survey be conducted to assure that the support staff are sufficiently challenged and utilized and that there is a fair distribution of work and resources. As part of this survey/analysis, the changing nature of the attorney work must be considered to determine the current demand for law office assistants and whether they can be replaced with paralegals. It should examine whether the job description of the law office assistant can be altered so that each secretary has the opportunity to assume more challenging and career enhancing responsibilities. In addition, a job classification study could be conducted to determine if there is a possibility of a natural course of advancement from a law office assistant to paralegal. In short, the support staff needs more promotional opportunities. CWAG can arrange for the Department to draw upon the expertise and resources of key law office administrators from other AG offices who have struggled with similar problems and worked to devise and implement solutions.

Recommendations:

3-1. The Department should make it a priority to increase support staff pay and promotional opportunities.

3-2. The Department should construct an effective and realistic orientation and training program for new legal support staff.

3-3. The Department should conduct a survey to determine the proper use and allocation of law office assistants and other support staff. CWAG can locate expert assistance.

CHAPTER 4

USE OF OUTSIDE COUNSEL

Although there appears to be a policy that focuses on outside counsel management, most lawyers and supervisors in the Civil Division are unfamiliar with that policy. Critically, the policy does not focus on two key matters: (1) *when* such counsel should be retained and (2) *what process* should be followed to seek approval for the retention.

The Attorney General should adopt a goal to substantially reduce the use of outside counsel. In addition to being more expensive than using his own Department of Law, outside counsel do not necessarily share the Attorney General's policy goals. Under current practice, bigger and more complex (and more policy-laden) the issue, the more likely the issue will be handled by outside counsel. Often, it is just those types of cases the Attorney General should handle in-house to ensure closer oversight and guidance on policy matters.

In addition, many client agencies tend to seek approval to use outside counsel on certain matters or because there is simply not enough capacity or capability in the Department of Law. Unfortunately, as that relationship grows, the agency begins to look to the outside counsel as its "go to" lawyers, rather than the Department of Law.

Finally, corporate General Counsel's offices, especially those well experienced in managing outside counsel, have developed budgeting, management, and risk assessment procedures. No similar procedures are being used in the Department of Law. The CWAG Review Team examined the various contracts with outside counsel and concluded that the costs to Alaska are especially high for much work which could or should be done in the Department. The team strongly suggests the Attorney General conduct an overall assessment of cases contracted out and develop a plan for reducing the volume and dollar amount of these contracts.

Further, the Department needs to develop a stronger budgeting, management and case evaluation process at the executive level; establish clear guidance at what level of authority any work is approved for outside counsel; and ensure that contracted work is approved for discrete and narrow increments, not for self-perpetuating, long-term, self-renewing legal tasks.

The Attorney General should adopt a goal of outlining a justification for additional attorney and paralegal resources assigned to the Department in lieu of paying for contracted legal work; the justification should be able to demonstrate overall cost savings to the state government and the public. This task is of sufficient importance to assign a Deputy or Chief of Staff personally to convene the appropriate staff to conduct the assessment, follow-through with the development of the data and analysis and write a

targeted report and justification for positions.

Recommendations:

4-1. One person in the Department of Law should be made responsible for overseeing the use of outside counsel in the Civil Division. Procedures should be promulgated stating clearly when outside counsel may be retained and the process to be followed to approve both the use of outside counsel and the specific counsel selected.

4-2. Promulgated procedures should include requiring budgets, budget accountability and careful work supervision of outside counsel. All contracted legal work should be subject to closer review, renewal requirements and shorter or smaller increments that require approval. Both clients and Department of Law lawyers should be trained in these techniques.

4-3. The Department should adopt a goal of reducing use of outside counsel.

4-4. The Department should prepare a thorough assessment of the use and cost of outside counsel, with the goal of justifying additional attorney and paralegal positions in lieu of outside counsel.

CHAPTER 5

PERSONNEL POLICIES AND GENERAL MORALE

A. General Morale: Factors for Improving Attitudes At Work

In order to gain some insight into the overall pulse and morale of the Attorney General's Office, the Team spoke to attorneys and support staff in the Anchorage, Fairbanks and Juneau offices. Given relatively low pay, long hours, confusion over expectations, demanding caseloads, and insufficient resources, the morale of the office is moderate. Some described the morale as "fine," one described the AG office as "cheerless." However, staff is generally very proud to work for the Attorney General's Office and they believe in the importance of what they are doing. In fact, many would like to become career employees of the Attorney General's Office. It is not surprising that many mentioned that more money, less workload, and shorter hours and other non-monetary rewards would raise morale considerably.

Universally mentioned as impacting morale is the geographical pay differential, particularly for the staff members in Anchorage and Fairbanks. For example, staff in Anchorage do not believe that staff in Fairbanks is entitled to the enhanced pay differential there, and Fairbanks staff is concerned they are going to lose it. The Review Team believes it may be more in the nature of an annoyance, but the distraction of the differential pay issue should be addressed as soon as possible. Hard feelings between departmental staff on an issue like this contributes to overall poor morale and to the "silo" mentality in the Department - "we're Fairbanks," "we're Anchorage," etc. Staff is further concerned because of the *uncertainty* of what this Attorney General may do on this issue.

Some staff members wanted assurances that the Office and the Attorney General will act as an independent office and public servant. While it is understood that the Attorney General is appointed by and works as a cabinet member of the incumbent Governor, staff wants to know that the AG is even-handed and can be seen as a protector of the people, advocating their interests. An image of an independent public servant would be enhanced by creating an "Opinions Section" which could handle requests for legal opinions or other advice from the Governor or the Legislature.

Universally, every type of employee from every location felt that more "contact" with and communication from the Attorney General would have an immediate and extremely positive impact on morale. This is particularly true for staff in Anchorage and Fairbanks, who do not want to have to think of the Attorney General as "someone in Juneau." Most attorney and support staff stated that they did not get a strong sense of being appreciated for what they do and the value of their efforts. The Monthly Report is not a substitute for a thank-you or a visit or communication from the AG. Most stated they perceived a lack of

connection between them and the Attorney General.

Additionally, many felt that there was a lack of official recognition for the years of service they have given the Attorney General's Office or the quality of work they are doing or the success they have achieved. Given that the attorneys and support staff are public employees and generally are paid less than their colleagues in the private sector, there are few rewards for their work other than some occasional recognition for the hard work they do. Every effort must be made to recognize staff members for their work and accomplishments. Annual or twice-annual award ceremonies at each major office location should be planned to recognize individuals in the office. This could include significant noncash employee awards, including parking spaces, plaques of appreciation for notable service, etc. While there are those who think awards ceremonies are “corny” or a waste of time, the reality is that most employees rarely see the Attorney General in person and they are buoyed by an opportunity to see and hear from the AG. The returns in morale are incalculable, and it gives the AG an excellent opportunity to speak to his employees about his mission and goals, and allows him to be seen as a person, with real ideas, feelings and compassion. It helps to build a team spirit, which in turn increases efficiency and effectiveness in the office and in providing legal services.

When the budget permits it, the Attorney General should consider an office retreat at some point (apart from the annual supervising attorneys' meeting at Girdwood),⁴ or two regional retreats, one in Central Alaska and one in the Southeast. Many AG offices in the West have considerable experience in planning, organizing and developing the goals for such retreats; like other gatherings with the AG, the returns are extremely high following a successful retreat. CWAG can provide the office with resources for the successful planning of a retreat.

Another suggestion is for the Attorney General to regularly schedule a brown bag lunch with invited employees, perhaps sections by section, and to include this in his plans for any trip to Anchorage and Fairbanks. On the notion that he is likely to eat lunch anyway, there is no better opportunity for quality time, however short, between the AG and his office staff. Again, there are great dividends as the AG is able to relate to people and communicate his goals more informally in these settings.

B. Improved internal communications

The Review Team believes the Department would benefit from improved internal

⁴ Some criticism was heard of current supervisors' retreats. In short, some attorneys expressed that they contained “too much fluff and too little substance.” They want the retreats to be well-organized and they want to use the time to provide real input for real change. The conclusion we draw is that retreats can be valuable if well-executed.

communications. There is already published an excellent "Department of Law Monthly Report," which covers cases resolved, decisions obtained, major case news, and very occasionally, personnel news by section. The Review Team suggests the Department initiate a bi-monthly "newsletter" which could be distributed by e-mail to all departmental staff. Such an "office-wide" newsletter, which need not be long, should include the following types of items: a message from the AG (e.g., in every other edition, no more than a paragraph, it could be a "thank you," or an explanation of one of twelve goals or objectives for the office - one per month) (include a photo, very important and easily embedded in a PDF or Word file); a message from one of the Deputies (at times when the AG's piece does not run); personnel news (promotions, lateral moves, babies born, weddings, etc.); "profile" on a key attorney in one edition and a support staff person in another; updates on what's happening in state government; the budget, news on facilities, etc.; birthday list; feature photo. Such a newsletter is a vital morale tool. It serves to provide cohesion to an office that is geographically dispersed, helps to overcome the "silos" in sections and in geography, gives the AG a platform to communicate directly to his "troops," and exposure to the department of its key resources - its people.

Another valuable communication tool is the state-wide supervisors teleconference. It would be helpful to continue this communication device which serves more than simply to inform the AG, Deputies and Chief of Staff on on-going issues and cases - it builds cohesiveness and a "team" atmosphere, which in turn improves office efficiency and performance. The teleconference should be used as a tool for listening to what is going on in the field and in the sections as much as for communicating messages back to them.

C. Salaries, working hours and leave policies

While the CWAG team was unable to conduct a meaningful statistical analysis, there is evidence that there has been a significant deterioration in pay for attorneys in the Department of Law compared to attorneys in private practice, in federal government service, or even in comparable jobs in state government. This has led to several recent departures by highly qualified or experienced attorneys to work elsewhere, particularly to the federal government.

The Attorney General should consider instituting a formal comparability analysis comparing Department of Law salaries and those of federal government and state government employees in Alaska and other state Attorney General offices. If this analysis agrees with existing anecdotal evidence that there is a dramatically widening gap between Department of Law salaries and all other reasonable comparables, then a major effort to improve salaries is in order.

More flexibility to provide bonuses and awards to top performing lawyers should also be explored, even if legislation is needed to implement such a program. Bonus awards and comp time, for example, could help alleviate the overall deterioration of pay scale.

Until more funds are made available for more comparable salaries, several other options are available including allowing more flexible work schedule and telecommuting, if appropriate. Employees complained of an inflexible working hours policy. The Review Team believes any number of models can be adopted by an AG to allow flexibility balanced with accountability for employee work hours. "Flex-time" is an approach that includes allowing employees to be at the office for their total required hours of work, but which permits commuting in early and leaving early, or arriving late and leaving late, or using the hours in the day with some flexibility, with the appropriate constraints. As long as supervisors have good management tools, accountability systems and understanding, flex-time policies can be very effective in improving morale without detracting from the quality or quantity of work. "Comp-time" policies are often avoided by bureaucracies because of the necessity to institute controls, supervision and the tools to prevent it from being arbitrarily or inequitably applied. It can be treated internally as "earned" time, which is redeemable, but subject to the demands of the office and the supervisor. In other words, the question of "when" it can be redeemed is subject to discussion and approval by the supervisor, much like vacation time.

Telecommuting for one or two days of the week is a particularly valued privilege in many AG offices; it requires supervision and some appropriate controls. It should always be viewed as a privilege, not a right; but it can be very effective for raising morale. Remote access technology allows some AG offices to allow employees to connect on a 1-800 line from a home or laptop modem to a secure firewall-protected server for various office software applications and e-mail. One employee mentioned she would like to continue working after putting her children to bed at night. CWAG can provide the Alaska Attorney General with contacts, resources and expertise from other states in this area.

D. Effective use of performance evaluations

Every line attorney and every supervising attorney was given the opportunity to offer comments about the current evaluation form and process. All expressed satisfaction and pleasure with the evaluation process because ". . . it is always nice to hear good things." No one admitted to ever getting a critical evaluation. Not all evaluations are done on a regular basis and some attorneys have gone several years without one being conducted. The attorneys gave a wide variety of reasons why the evaluations were done. Some saw them as a "reward," and consequently the evaluation did not contain anything that even remotely approached criticism, constructive or otherwise. It is a classic case of "grade creep," resulting in meaningless grades.

Designating an attorney as "excellent" has been more the rule than the exception. The Team reviewed a random sampling of completed evaluations and *all* were marked "excellent" in every category. None of the attorneys mentioned giving much consideration to the "future developing plans" section of the evaluation. In spite of, or maybe because of the above, the Review Team concluded that the current evaluation form was outdated and

of little value. We recommend a drastic revision, consistent with Alaska law and regulations.

CWAG can assist the Alaska AG office obtain samples of effective performance evaluations from other jurisdictions. Many forms used by other states and the federal government (which has decentralized its performance appraisal system) place a greater emphasis on different types of subjective analysis more than numerical evaluations, which slide ever upward. Evaluations are more effective when evaluator answers questions like, "What improvements could the subject make in the next reporting period?" "What do you hope or expect to see from the subject in the next period?" Some systems call for a pass-fail approach, obviating the need to rank or classify the vast majority of competent and well-performing individuals. What is important is to "stoke" and clarify the expectations for increased performance. There is literature on outcomes and competency-based performance appraisals.⁵

Many expressed confusion over what attributes they were being evaluated on. Some thought that only their "lawyering" skills were scrutinized. Others felt that their "interpersonal" skills were also part of the process. Yet others thought that how they furthered the goals of the office were the subject of the evaluation. It should be made clear what the performance expectations are and what the evaluation will cover. If evaluations are used for bonuses and awards, that should be clear to the individuals being evaluated.

E. Retention and recruitment issues

The Review Team found inconsistent recruitment and retention practices in the Department. Each geographic office has a different philosophy and approach when it comes to hiring. Much of the active recruitment is done by each office from members of the local bar and rarely extends outside of the State of Alaska. There is a perception among some that for desirable, open positions, no preference or special consideration is given for hiring current employees of the Department of Law. Despite their service and dedication to the Department of Law, they are considered the same as any other candidate.

In an effort to attract attorneys to the Bush offices of the Attorney General's Office, a policy was initiated which required all "new hires" in the District Attorney's Offices to commit to two years in the Bush. Notwithstanding the good intentions behind the policy, the Bush

⁵ An emerging strategy for retaining employees is to replace classic rating scales (checklists of traits) with outcome-based and competency-based tools. Supervisors and subordinates work together to develop a draft performance plan linked to the agency's goals. With a work plan and set of identifiable outcomes, they jointly design the evaluation criteria; the expectations and objectives of both the manager and the employee are then clear.

assignment policy has caused considerable consternation and hardship. Often the newly-hired attorney would agree to the two-year tour of duty, would be hired and then move to a regular location waiting for a Bush vacancy. In the interim the attorney would put down roots and get established in that office, the local legal community and the city. When the vacancy did occur in the Bush, expectedly or unexpectedly, the attorney would be confronted with pulling up stakes and starting over again. On many occasions, rather than moving to the Bush, these attorneys resigned from the Department, taking their valuable newly-gained experience with them. Also, some perceive the Bush policy is not equally applied due to "political" considerations. Some new attorneys were required to serve a tour in the Bush and some were relieved of this opportunity. In short, the Review Team believes the Bush policy has caused more problems than it solved. As addressed elsewhere in this report, the policy of requiring new attorneys to work in the Bush should be dropped and replaced with better incentives for Bush service. The office should examine a way to equitably deal with those attorneys remaining under the current policy who do not wish to serve.

In order to improve retention of experienced attorneys in the office, the Department should use these attorneys as mentors to train the Department's newer attorneys. As discussed elsewhere, this approach also addresses the question of the promotion and use of the Department's experienced attorneys without making each one a supervisor. One option is to designate a number of experienced attorneys as office mentors, to pair them up with newer attorneys and to include within their duties their mentoring activities. Section supervisors should oversee this active mentoring program, ensuring that there is a measure of professional satisfaction for both the mentor and the mentored. With the use of appropriate rewards and recognition in the program, having experienced attorneys serve as mentors will bring about improvements in training, readiness, morale and retention.

The office would also benefit from a centralized system and active process for recruitment. A pool of possible attorney candidates could be recruited, established, and maintained at a central location. The office should consider developing a "recruitment" director whose job would be to "sell" the office and recruit to fill the pool for future vacancies. When a vacancy occurs, candidates can be pulled from the pool and referred to the office with the vacancy. As part of the recruitment process, candidates could indicate which Attorney General Offices they are willing to work in.

Every effort should be made to sell the Alaska Attorney General's Office and the District Attorney Offices to draw the interest of possible candidates. The office should aggressively recruit licensed attorneys from other jurisdictions as well as third-year law students from various law schools. CWAG can assist the Department in making contacts with other AG offices' recruitment directors or assistants.

Even though the Alaska Department of Law may never be able to compete with the wages paid in Alaskan private practice, there are many attractive aspects of the office that could be used to attract worthy candidates. The opportunity to get valuable experience

early in an attorney's career is but one factor to draw the interest of interested candidates. The office should undertake a study of the "real" benefits employees of the Attorney General's Office receive. For example, retirement benefits and medical coverage should be valued in real dollars to determine the actual wage offered.

Clearly, drawing candidates to the Bush can be a unique challenge. Every staff member who spoke to this issue suggested that the Bush offices do offer advantages that the others may not. For example, the ability to gain valuable experience immediately and to enjoy the outdoor environment. Other fringe benefits could be offered to make the Bush more attractive. As discussed in Chapter 2, above, these include use of a state car, state housing, and a grocery or food allowance.

Recommendations:

5-1. The Department should re-evaluate geographic pay differentials.

5-2. The Department should institute awards ceremonies, brown-bag lunches with the AG, retreats and more opportunities for the AG to interact and thank departmental staff.

5-3. The Department should electronically publish a newsletter, apart from the Monthly Report, for communicating departmental news and information. The regular state-wide supervisors' teleconference should be continued to facilitate information exchange and build cohesiveness.

5-4. The Department should initiate a pay comparability analysis, and seek more funds for higher pay, if the comparability analysis shows it is necessary.

5-5. The Department should seek more flexible work and leave rules.

5-6. The Department should seek authority to provide awards and bonuses for extraordinary performances.

5-7. The Department should revise its performance evaluation forms and methods to overcome "grade creep" and instead find meaningful measures of performance.

5-8. The Department should institute an office-wide recruitment

program, provide incentives or preferences to existing employees to move into to open positions, “sell” the office both inside and outside of Alaska, and equitably resolve the failed Bush assignment policy.

CHAPTER 6

TRAINING AND MENTORING

Training for attorneys in the Department of Law ranges from good to poor. There is available some limited paid training from the National Institute for Trial Advocacy (NITA), the National Advocacy Center (NAC) and the National District Attorneys Association (NDAA), but it was the view of the Review Team that the paid opportunities were too few. Continuing Legal Education (CLE) credits appear to be met, but not in any coordinated manner. There appear to be fewer in-state training opportunities in litigation, trial practice, and related matters, such as discovery, court rules, pre-trial work and motion practice. Notwithstanding the fine expertise in the Department's attorneys, training in legal subject matter areas is ad hoc, spotty and uncoordinated. There is little or no coordinated, ongoing training on the unique obligations of public lawyers, including conflicts, gifts and honoraria, public records, and multiple client representation.⁶

The Department should institute a state-wide, centralized, standardized all-employee Training Program, headed up by a single person (“Training Officer”) or a Training Council.⁷

⁶ One AG office has described the need for *Public Lawyer 101*, a training program designed to impart knowledge not fundamental to private practitioners. All public lawyers need to know certain public service ethics laws and – whether rendering advice to clients or prosecuting cases – about the reach and nuances of the state's public records laws. The breakdown offered is: The Public's Information: Open Meetings Laws, Public Records Laws, Confidentiality Laws; The Public's Rights: No Bribery, Extra Compensation, or Inappropriate Gifts, No Conflicts of Interests, No Discrimination or Favoritism; The Public's Resources: The Public's Money, The Public's Personnel, The Public's Property, Public Procurements. CWAG can provide assistance in locating contacts and resources for such training.

⁷ One state AG Office provides for a Training Committee with the following description:

[The] Training Committee ... is to oversee training for all deputies and to provide training programs for the non-attorney staff as well. It coordinates and facilitates department training, is responsible for setting departmental training goals and action plans, and insures that the various facets of the program are carried out. It is also responsible for the continual evaluation

It needs to set forth clear and consistent goals, timetables, identification of resources and targets. Substantive legal area training, as well as criminal and civil procedure, should be included; ethical training must be “pumped up.” Both in-house and external training need to be addressed. An aggressive program of locating and funding training opportunities should be engaged in by the training council or the training officer, in consultation with section and division chiefs. The Civil Manual should be revised to integrate a chapter on training. Mentoring should be considered an integral part of training; “mentoring time” should be accounted for in training plans. As more fully discussed in Chapters 2 and 5, an active mentoring program is needed by the Department.

CWAG can assist the Department in locating resources and contacts that can help the office develop a coordinated program. Some AG offices have exemplary in-house training programs that can serve as a model for other states. The Review Team urges the Department to continue to rely on multi-state CLE training opportunities presented by the National Association of Attorneys General (NAAG) and other associations that provide such programs. They should supplement, not define, the Department's training program. In-house training programs should include turning to the local bar associations and the bench; the judges are willing to engage in sessions that are open to all bar members, but the Department's training officer or council should be the one to pro-actively initiate such opportunities.

The Department's Intranet contains some materials useful for training, including administrative, legislative, and other operational procedures; library lists; jury instructions; the timekeeping manual and codes; the department style manual; forms; and “how-tos.” However, the site is “passive,” it requires actively moving to the site. It cannot substitute for a coordinated training or orientation program.

Support staff training is also inadequate and uncoordinated. In some locations an effort is made, in most places on-the-job training is all that is expected or all that can occur. As discussed elsewhere, orientation for new support staff is either lacking or involves the requirement for the individual to sit and read manuals.

New attorney orientation is also lacking. It appears to be ad hoc, dependent entirely on the whim of the supervising attorney. Such an orientation should include more than showing the new individual the library and the coffee room. The Civil Manual's exhortation to visit the Intranet is insufficient. A standardized office-wide “checklist” of orientation tasks should be used. An appropriate orientation for new staff should include, among other activities:

of the program, and for making modifications based upon new or changing needs and past experience.

T a visit to the Information Services shop, introduction to key IS personnel, learning the appropriate IS contacts and procedures

T a visit to the clerks of the courts in which the attorney expects to practice; the value of meeting and familiarizing oneself with the court clerks is tremendous. It is important to meet and know the docketing clerk, the clerk of the court, calendaring clerk and other key personnel. These people behind the scenes are all-important; friendly relations with them cannot be underestimated.

T a visit to executive office staff resident in the region where the new staff starts work; a brown-bag lunch with the senior attorneys in the office should be planned. For offices outside of Juneau, a new-employee brown-bag lunch should be planned whenever the AG, Chief of Staff or top Deputy is in town.

Cross-fertilization among attorneys in the office is another tool for training and raising morale. Most attorneys thirst for the opportunity to learn and broaden their skills in the legal practice. While there is some fear that this may be precluded by the existing BRU's, the Department should make a concerted effort to overcome barriers and allow cross-assignments for limited times for training.

Finally, training for all personnel in Information Services is seriously lacking throughout the Department. Knowledge of even the basics of office technology, ranging from e-mail to various computer software applications is haphazard and mostly learned on-the-job. The Review Team found training on these applications has been minimal. Virtually all personnel interviewed said they needed quality training in IS matters; they had mastered certain features of the applications, but IS staff left them in the cold as soon as the easiest features were mastered. More sophisticated procedures and features are unaddressed. The coordinated program under the Department's Training Officer or Training Council needs to include a major IS component to any state-wide overall training program. CWAG can provide specialized resources from other AG offices that can assist the office in developing a coordinated and fruitful IS training program.

Training in IS systems calls for both "classroom" training AND on-the-job training, i.e., practical, at-your-desk training. Instructors can only impart so much knowledge on chalkboards or in lectures; to learn computer systems and software, users must sit at a station and practice the steps, know how to use the reference manuals and instructions, and know how to contact IS staff to solve problems. The Department should adopt a goal of "growing" experts in each section throughout the Department. Identifying those attorneys and support staff in each section who "take to" the equipment and software is important. Those individuals should be designated to assist others in their sections on a routine basis.

Recommendations:

- 6-1. A vigorous in-house training program, coordinated by a Training Council or staff member, must be established. Active mentoring from experienced attorneys in the office is essential. Experts from other AG offices should be consulted.**
- 6-2. Reliance on multi-state CLE training opportunities from NAAG, NAC, NITA should be continued, but treated as supplemental to training conducted and coordinated in-house.**
- 6-3. Support staff training must be improved.**
- 6-4. Orientation for new attorneys and support staff needs to be standardized and better executed.**
- 6-5. Concerted “public service” attorney training is imperative.**
- 6-6. Cross-fertilization of attorney practice should be a training goal.**
- 6-7. The Department has a serious and immediate need for a coordinated program of IS training for all personnel state-wide.**

CHAPTER 7

INFORMATION SERVICES

The Department is both facing serious deficiencies and outstanding promise in the field of Information Services (IS). As to the latter, the IS shop is now headed by a strong leader who has a clear vision and understanding of the strengths and weaknesses in the office. Additionally, the Review Team commends the Department on changing the name of this section from Data Processing (DP) to Information Services (many offices interchangeably use “IT,” meaning Information Technology). When the Review Team was in Anchorage, the sign on the shop door still read “DP,” in its acronym form, not even spelled out. However, the section chief is committed to effecting the name change throughout the Department. This issue is more than “what’s in a name?” The recognition that the practice of law in the government is “information”-based is critical to an understanding of how technology must be employed in law offices. The technology is a fundamentally integral tool to compile and exchange information vital to providing legal services for the state. It is not about “data,” even if the technology is used for data collection and analysis as well.

Throughout law offices in public and private practice, the issue is now “knowledge management.” Knowledge management in an AG office implies considerably more resources dedicated to the overall mission and goals of the office. To achieve optimum knowledge management, an AG office must use new and powerful technology-based tools, such as document sharing, case management, calendaring, brief banks, and expert witness databases, to generate value from intellectual work product and other knowledge-based assets, which in turn improves the practice of law. Other state AG offices have developed and executed plans for integrated knowledge management which would considerably benefit the Department of Law. CWAG will assist the Department in setting up visits and consultation vital to the thoughtful development of an improved knowledge management (KM) approach to the office. The Review Team believes the Alaska Department of Law should schedule a targeted review to provide suggestions for an overall plan of improvement of IS and knowledge management resources.

The Department continues to have certain staffing, training and personnel problems in the Anchorage office, which received the most complaints from interviewees. The IS chief is aware of the problem areas and is making a concerted effort to improve the problems. The headquartering of IS management in Juneau is commendable, as IS should be located in the seat of executive authority. At the same time, the goal of the IS chief should be to provide optimum service in all offices equally. Apropos to this is the need to improve the Help Desk operations in all offices. There should be a reliable system of phone contacting, voicemail, and “tickler”-based problem identification and solving. After-hours problems need to be addressed.

The office's hardware swap-out targets should be reassessed. Currently, the annual replacement targets are at 20% of PC's and other equipment, such as printers and the like. The Review Team believes the target should be 33%, which means that 3 year old machines, heavily used and outdated, should be retired. At the four- or five-year point, the PC's are simply unusable, unreliable and incapable of performing necessary legal work. Attorneys complained of "crashing" machines, losing information, and being unable to run programs simultaneously. The Legislature should be made aware of the inefficiencies and potential disasters waiting to happen with old information equipment. Records of lost time, down time and similar statistics may help convince the Legislature understand the need to better fund the office information services. One suggestion is to borrow funds for capitalization to make replacements; as the equipment has a short half-life, the Department would be "buying time" through such financing.

Case management in the office calls for a major evaluation. The Review Team recommends a targeted special review team to come to Alaska, and as part of an overall IS and knowledge management review, analyze the existing setup and provide suggestions for improvement. In this review, considerable attention was drawn to the use of the Javelin system for case management. This legacy system is not user-friendly, even though some have grown accustomed to it. Web-based interfaces are superior and available and are clearly more user-friendly. The Review Team recommends the Department re-evaluate the Javelin system for improvements or replacement.

As part of its knowledge management assets, the Department should institute an effective and user-friendly brief bank or train attorneys to use the "I-Drive" for sharing documents that would assist attorneys in drafting briefs, documents, motions, and increase efficiency in the office. If the I-Drive solution is the approach taken, the Department must develop uniform procedures for its use; this is a task for the new training officer or council. A targeted team of IS/KM experts should examine the needs and options for the Department.

Additional attention was drawn to the PREMISE and Law Desk legal research systems. Attorneys who had only the choice of Westlaw on-line or PREMISE did not want to lose PREMISE, but there was a widespread impression that Westlaw on-line involved excessive costs to the Department. The Review Team has been advised that West's cost structure has changed favorably. The Review Team strongly recommends web-based or web-interface solutions for its legal research tools over the existing multiple interfaces. Web-based systems are user-friendly, reliable, accessible remotely, capable of password security and consistent with law office practice trends.

Another serious IS problem throughout the Department is the lack of a standardized calendaring system. This is not a matter of convenience, but absolutely essential to prevent missed deadlines, missed filings or other appearances. The Review Team strongly recommends the targeted IS review, discussed above, be invited and include calendaring

as part of its analysis.

Additionally, there is an issue of IS support in the Bush. Bush support is woefully inadequate. Slow modem connections routinely crash, are subject to black-outs and other technical problems. There appear to be occasional misallocations of technology to the Bush, so that attorneys assigned in those areas occasionally are given brand new equipment that they do not need and not enough of what they do need. The Department needs to thoroughly assess the technology needs of staff assigned to rural locations and seek to improve the conditions, hardware, and telecommunications connections, to the extent it is possible. This may require legislative attention.

Finally, the Department should establish one or more "IS user" committees made up of attorneys, support staff, from DA offices and the AG office, and in all geographic locations. Invitations should be put out for volunteers who are concerned about IS solutions. The number one complaint about IT/IS offices in the public and private work worlds is that they are unresponsive to users - - they fail to understand user needs and build systems to the convenience of the "techies." Such a committee or multiple committees would assist in assuring a user focus in the IS shop.

Recommendations:

7-1. The Department should schedule a targeted IS review team from other state AG IT/IS offices for analysis and options for improved IS and knowledge management in the Alaska DOL.

7-2. IS should improve its Help Desk and user support.

7-3. The Department's case management system should be completely re-evaluated; a web-interface-type system should be preferred.

7-4. A state-wide brief bank or improved I-Drive procedure should be established.

7-5. IS and tech support in the Bush should be vastly improved.

7-6. The Department should establish one or more IS user committees.

CHAPTER 8

STANDING WITH THE ALASKA LEGISLATURE

The deterioration of the relationship between the Attorney General and the Legislature in previous years cannot be ignored. The constant feuding, and the resulting efforts by the Legislature to “micro-manage” the Department of Law, has had a significant negative impact. Funding has been limited and budget flexibility enormously constrained.

A top priority of the current Attorney General should be to repair the relationship between the Department of Law and the Legislative Branch. Never will both always agree, but increased communication is essential. The appointment of a specific Legislative Liaison for the Department of Law is an important step in the right direction. The Attorney General himself should be in regular communication with the legislative leadership and seek their guidance on important structural and organizational issues, as well as policy issues. In return, it is extraordinarily important that the legislature provide more funding and more budget flexibility.

Recommendations:

8-1. The Department should empower the new Legislative Liaison in the Attorney General’s Office.

8-2. The Attorney General should maintain regular communications with the legislative leadership.

8-3. The Attorney General should ask the legislature to respond to the funding inadequacy and lack of budget flexibility.

CHAPTER 9

SETTLEMENT PRACTICE AND AUTHORITY

The formal settlement authority memorandum is adequate in all respects, although it may need slight modifications to match any changes in organizational structure. Currently there are significant pressures to encourage the settlement of high risk cases in the Department of Law, including heavy case loads and inadequate complex trial experience on the part of a few attorneys. The fact that the Risk Management Office has been unable after 9/11 to acquire adequate excess coverage also encourages the settlement of high risk matters.

Formal risk assessment techniques are not used as a matter of course by the Department of Law or its clients. Most corporate litigation departments require the use of such techniques instilling rigor into the process of determining when settlements are appropriate. Expert advice in this area is available and should be contacted.

Recommendations:

9-1. The Department should modify the settlement authorization policy to match any structural changes.

9-2. The Department should require attorneys to be trained in the use of formal risk assessment techniques and to use those techniques as part of the settlement appraisal process. Expert advice should be obtained.

CHAPTER 10

ETHICS

The Review Team perceived that there was some confusion about whom to contact for ethics advice. With respect to ethics inquiries that originate outside the Department, people are supposed to be referred to the state ethics attorney. However, there appeared to be insufficient information outside the Department about the proper person to contact. The state ethics attorney position should be properly designated and well publicized throughout the Executive Branch.

Similarly, inside the Department, there should be a designated person or persons to handle questions on conflicts, ethics and related matters. At a minimum, both the Civil and Criminal Divisions should have principal points of contact for these questions. Further, the principal ethics contact persons should be well publicized throughout the Department.

Accordingly, the Review Team recommends centralizing and standardizing its ethics advice function, both external and internal, and promulgating its procedures. Among the options the Department might consider is establishing an in-house Ethics Committee with people from across the Department, as found in some state AG offices. Such a committee could designate additional experts in certain areas, e.g., conflict-of-interest, multiple client representation, gifts and honoraria, etc. The list of experts could prove to be an invaluable resource.

Recommendations:

10-1. The Department should centralize and standardize its ethics advice function, and designate well-publicized points of contact, both civil and criminal.

10-2. The Department should consider establishing an Ethics Committee with designated experts in ethics legal areas.

CHAPTER 11

CASELOAD MEASUREMENTS

The Civil Division requires its attorneys to keep track of their time. The Criminal Division does not, but should. Many complaints from attorneys were made about the cumbersomeness of the timekeeping procedure being used. Fairly simple timekeeping software packages are now available. CWAG can provide contacts and resources to assist Alaska to find a non-burdensome timekeeping system for the criminal division and the line prosecutors. But, simple or complex, time keeping is essential to demonstrate what lawyers are working on and characteristics of their workload. In a world of budgetary constraints, timekeeping justifies expenditures and reveals areas where money can be saved.

Many other metrics have now been developed for measuring workload and work effort by attorneys. The Department of Law uses only the most rudimentary calculations such as caseload. Numbers of cases opened, trials handled, complexity of cases, dollars collected, and similar measures, are not being captured, but should be. For example, some state AG offices use a weighting scale - - numbers from 1 to 5 - - for the screening attorney or supervisor to designate the complexity, length or demands of a case, whether a trial matter, appellate case or opinion or advice assignment. An attorney's workload can be assessed more accurately with the additional attributes being measured. All work should be accounted for qualitatively as well as quantitatively.

Additionally, a measurement of attorney caseload will not be appreciably meaningful if attorneys are carrying cases which have effectively been closed or should be closed. Some cases which have been decided or in which there has been a disposition may have to "sit on the shelf" pending the return of a remittitur, the passage of time for an appeal or for post-judgment fee matters. However, there should be an improved set of measurements to account for such matters, either by coding or segregating them into active and inactive cases. "Caseload" should not include matters in which the attorney is not performing any meaningful work.

The Review Team recommends that a task force, perhaps with outside assistance, be formed to focus on developing appropriate metrics to demonstrate the effectiveness and efficiency of the attorneys in the office. Within its scope should be the development of objective caseload measurements that distinguishes among active, inactive and closed files.

Recommendations:

11-1. The Department should continue timekeeping requirements

for the Civil Division and require timekeeping for the Criminal Division.

11-2. The Department should seek a simpler timekeeping system.

11-3. The Department should form a task force or seek outside assistance to develop the appropriate metrics to demonstrate attorney work effort.

CHAPTER 12

CLIENT SATISFACTION AND REGULATION REVIEW

The Team met with representatives of many of the state agencies which are served by the Attorney General's Office. The principal areas of inquiry were their level of satisfaction with the services offered by the Attorney General's Office, frustrations that they have experienced, and suggestions to improve the relationship between their agency and the Attorney General's Office.

The overwhelming majority of client agencies that were contacted were extremely pleased with the representation offered by the Attorney General's Office. Adjectives like "responsive," "available," "expert," "helpful," "hard working," and "well qualified" were characteristic of their comments. They were pleased with the level of expertise possessed by the attorneys and with their willingness to learn more in the relevant areas. Many felt that the quality of representation they have had from the Department met or surpassed what they would expect from private practitioners. When asked if they would hire private counsel to be their day-to-day legal representatives rather than use assistant attorneys general, they emphatically said, "No!"

The review and approval of agency regulations was an area of concern. The Review Team was told that according to the current procedure the client agency will write a new regulation with the help of the Attorney General's Office. Then the regulation will be published and public notice given. Once this is accomplished, and before the regulation becomes final, it will undergo a final review by other staff in the Attorney General's Office. At this final review, the regulation might be rejected, thus requiring the process to start anew. Clients have questioned whether it would be better to have all parties in the Attorney General's Office review the regulation before it is published and advertised. The Review Team recommends the Department re-examine the current procedures and eliminate repetitive or circular processes internally in regulation review.

Many client agencies commented that occasionally it takes the Attorney General's Office an extended period of time to respond to a request for advice. At the same time, they acknowledged that because staff is overworked, the tardiness is understood. Some expressed concern that if excessive workloads are not addressed many of the gifted attorneys they work with may be compelled to leave the office.

Recommendation:

12-1. Regulation review and procedures in the Department should be re-examined and be streamlined.

CONCLUSION

Again, the Review Team wishes to express its thanks to Attorney General Renkes and his staff for the opportunity to examine the operations of the Department of Law. It is without doubt that the review team members learned as much or more of value to them than they could impart in this report. It is their sincere hope that this report will provide value to the Attorney General and the Department of Law.